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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 1016

HUNT TOOL COMPANY, *Petitioner*

v.

RICHARD R. LAWRENCE, DAILEY OIL TOOLS, INC., and HOUSTON OIL FIELD MATERIAL CO., INC., *Respondents*

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

STATEMENT AND ARGUMENT

This is an action for patent infringement. Respondents brought suit against Petitioner on two patents, one to Costello, No. 2,190,442 (R. 1417), and one to Lawrence, No. 2,377,249 (R. 1431). Petitioner counterclaimed on the patent to Davis, No. 2,247,188 (R. 1426).

There is no conflict of opinion as to any of the patents involved. The Judgment (R. 1272) of the United States District Court for the Southern District of Texas decreed that claims 1, 2 and 16 of the Costello patent and claims 5 and 6 of the Lawrence

patent were valid and infringed by Petitioner, and that claim 10 of the Davis patent was invalid and not infringed by Respondents. This Judgment was affirmed by the United States Court of Appeals for the 5th Circuit.

The Courts found that Costello was a pioneer inventor, and that Lawrence took an important step forward in improving upon the Costello concept when he provided a practical tool which had been needed by the oil industry for many years.

The Courts also held that the Lawrence patent had been deliberately copied by Petitioner, although some of the parts of the combination claimed in it had been reversed as to position, or modified, in a specious attempt to disguise the infringement.

The Courts also held that rights under the Davis patent had been purchased by Petitioner and asserted against Respondents to dissuade Respondents from asserting rights under their patents.

The District Court filed fifteen Findings of Fact and eight Conclusions of Law (R. 1265-1271, 142 F. Supp. 332-335). Except for the first two sentences of Finding of Fact No. 14, these Findings and Conclusions were adopted by the Court of Appeals.

The Petition for the Writ of Certiorari filed in this Court does not attack, in any way, the Conclusions of Law reached below. Instead, eight abstruse and academic questions are presented with respect to the rationale of the opinion of the Court of Appeals on the issues as to validity and infringement of the patents in suit.

None of the reasons for review set forth in Rule 19(b) of this Court is present here.

The Petition avers (Reason No. 1, page 7) that the oil well pulling tool industry is concentrated in Houston, Texas. The Court will take judicial notice of the fact that oil well tools are manufactured, sold and used in other than the 5th Circuit. Indeed, Costello, one of the patentees involved, lived in California (R. 1419).

The Petition also avers (Reasons 2, 3 and 4, page 8) that important questions of federal law are involved, which should be settled by this Court. However, it is obvious from a mere reading of the Opinion of the Court of Appeals that only long settled rules of law are involved, such as those relating to the doctrine of equivalents (*Graver Tank Co.* v. *Linde Air Prod. Co.*, 339 U.S. 605), the treatment to be accorded of pioneer and improvement patents (*Hildreth* v. *Mastoras*, 257 U.S. 27), and the doctrine of file wrapper estoppel (*Smith* v. *Snow*, 294 U.S. 1, and the cases cited on page 11 of the Petition).

The Petition also avers (Reason No. 5, page 9) that the Court of Appeals has decided federal questions in a way in conflict with applicable decisions of this Court, but nowhere in the Petition is any further mention made of the alleged conflict.

The Petition also avers (Reason No. 5, page 9) that the Court of Appeals has so far sanctioned such a departure by the District Court as to call for the exercise of this Court's power of supervision. Presumably, this has reference to the allegations in the Petition that the Courts below compared Petitioner's

accused device with Respondents' commercial product.* There is no basis for these allegations. The District Court carefully examined the Petitioner's accused tool, even going to the Hunt Tool Company shop in order to do so (R. 685-707), but the Respondents' commercial product was not examined by either the District Court or the Court of Appeals.

The Opinion of the Court of Appeals states (R. 1451):

> "On the issue of infringement appellants complain mainly that the district court incorrectly compared their accused tool not with the claims of the Costello and Lawrence patents but with the Dailey and HOMCO tools which actually differ considerably from the protected designs; * * *"

The Opinion of the Court of Appeals then goes on for several pages of careful analysis of the District Court's Findings as to the Costello patent, the Lawrence patent and the Hunt accused tool. Thus, far from sanctioning a departure from the usual procedure in the adjudication of the questions of infringement, the Court of Appeals found that there had been no departure.

In the Petition, there is speculation (page 5) as to the interpretation by the Court of Appeals of *Consolidated Valve Co.* v. *Crosby Valve Co.*, 113 U.S. 157, 179. The portion of the Opinion in the Consolidated Valve Co. case quoted by the Court of Appeals

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* The Petition (page 5) erroneously avers that Respondents alleged that the accused device of Petitioner was a copy of Respondents' commercial product. Respondents have never so alleged. On the contrary, Counsel for Respondents objected to a comparison of Petitioner's accused device with Respondents' commercial product (R. 200).

sets forth the same rule of law as that reiterated in *Graver Tank Co.* v. *Linde Air Prod. Co.*, 339 U.S. 605. The Consolidated Valve Co. case was not interpreted by the Court of Appeals as sanctioning a comparison of commercial products in deciding the question of infringement.

CONCLUSION

This case does not present any unsettled questions of law. The Petition alleges that the District Court erred in holding that the accused Hunt tool is the equivalent of the structures of Respondents' patents. "A finding of equivalence is a determination of fact." *Graver Tank Co.* v. *Linde Air Prod. Co.*, 339 U.S. 605, 609. The Court of Appeals held that the District Court's findings on this issue were correct. There is no reason for further review. The Petition for a writ of certiorari should be denied.

Respectfully submitted,

EARL BABCOCK
1301 Cedar Street
Duncan, Oklahoma
Attorney for Respondents

May 23, 1957

Certificate of Service

I hereby certify that on the 23d day of May, 1957, I mailed copies of this Brief, with postage prepaid, to Mr. J. V. Martin, attorney for Petitioner, care of Vinson, Elkins, Weems & Searles, Esperson Bldg., Houston 2, Texas.

EARL BABCOCK
Attorney for Respondents

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

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HUNT TOOL COMPANY, *Petitioner*

AGAINST

RICHARD R. LAWRENCE, DAILEY OIL TOOLS, INC., AND HOUSTON OIL FIELD MATERIAL CO., INC., *Respondents*

PETITIONER'S REPLY BRIEF

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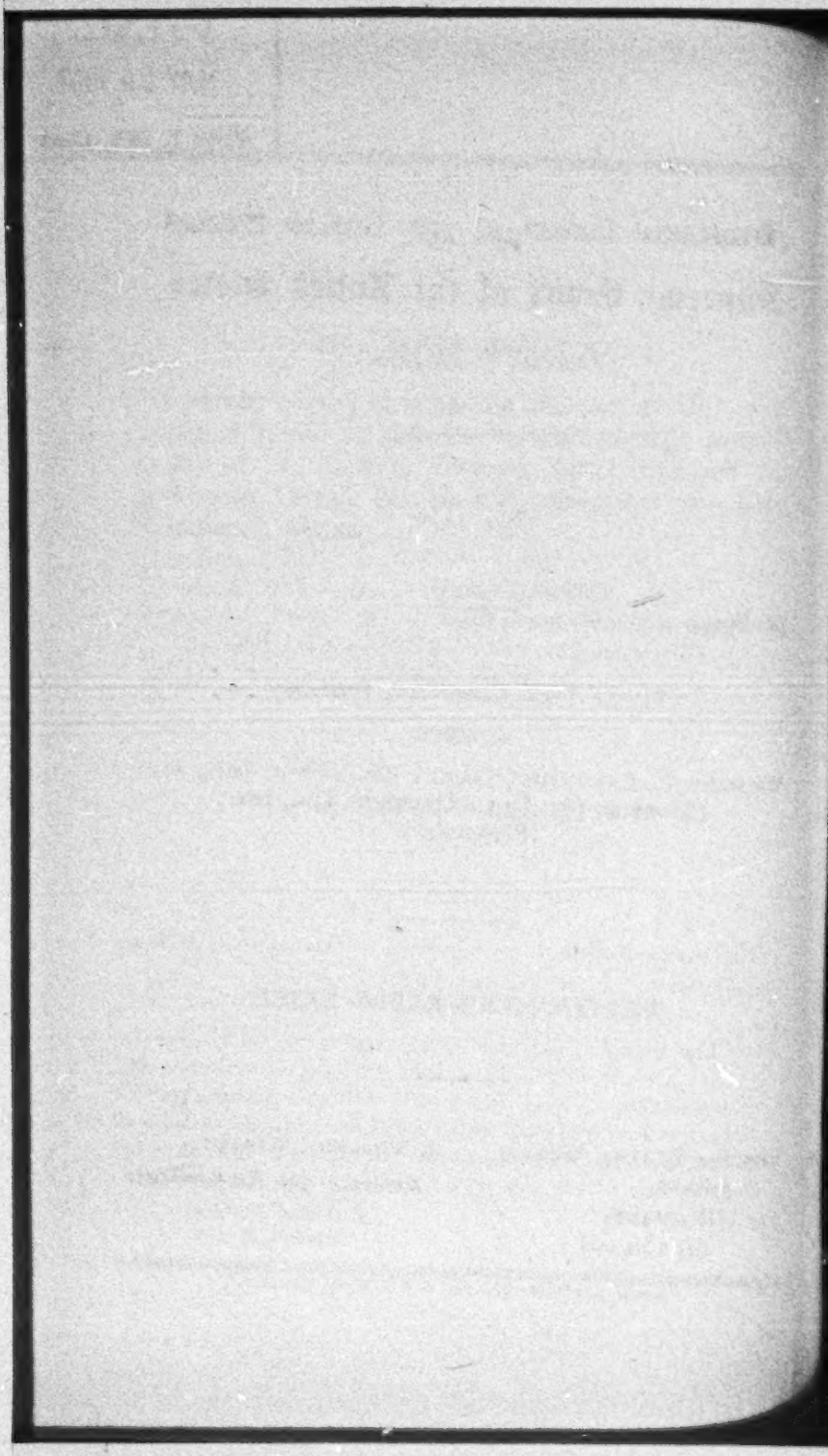

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PETITIONER'S REPLY BRIEF

The purpose of this reply brief is to reply to the following statement in respondents' brief (page 3):

> "The Petition also avers (Reasons 2, 3 and 4, page 8) that the oil well pulling tool industry is concentrated in Houston, Texas. The Court will take judicial notice of the fact that oil well tools are manufactured, sold and used in other than the 5th Circuit. Indeed, Costello, one of the patentees involved, lived in California (R. 1419)."

In SCHREIBER CO. v. CLEVELAND TRUST CO., 305 U.S. 47, 50, the Supreme Court granted certiorari because, notwithstanding the doubtful validity of the patents, litigation elsewhere, with a resulting conflict of decision, was improbable because of the concentration of the automobile industry in the Sixth Circuit.

The petition in the present case states, as one of the reasons for granting the writ:

> "1. Notwithstanding the extremely broad scope given the patents in suit by the Court of Appeals for the Fifth Circuit, litigation elsewhere, with a resulting conflict of decision, is improbable because of the concentration of the oil well pulling tool industry in Houston, Texas. *Schreiber Co. v. Cleveland Trust Co.*, 305 U.S. 50."

The above quoted statement in respondents' brief does not specifically deny the above, but in view thereof your petitioner would respectfully show:

It is, of course, true that oil well tools are manufactured, sold and used in other than the Fifth Circuit, but that does not change the undisputed fact that *the oil well pulling tool industry*, to which the patents in this suit relate, *is* concentrated in Houston, Texas, and it is for that reason that litigation elsewhere is unlikely and the opinion of the Court of Appeals herein, as a practical matter, will become final if not reviewed.

Your petitioner is filing with the Clerk a certificate from the United States Patent Office showing that the only actions for infringement of the Costello and Lawrence

patents are the actions filed in Houston, Texas; that is, the present action and the three actions referred to in the footnote on page 8 of the petition.

Your petitioner is also filing with the Clerk a certified copy of the deposition of Richard R. Lawrence taken in *Richard R. Lawrence, et al. v. Wilson Supply Company*, Civil Action No. 9912, taken on February 14, 1957, and showing that respondents' competitors in this industry are concentrated in Houston, Texas. Mr. Lawrence is a respondent herein, patentee of the Lawrence patent in this suit, and President and General Manager of respondent Dailey Oil Tools, Inc. On pages 65-66 of his deposition, respondent Lawrence testified as follows:

"Q. What competitors do you have in that business?
A. Well, we have Hunt Tool Company, Wilson, Brown Oil Tool and Houston Engineers.

MR. BABCOCK: And Homco.

THE WITNESS: And Homco.

Q. (By Mr. Simms) Homco is licensed?
A. Yes, sir.
Q. Those are your only competitors, and they all infringe, in your opinion?
A. Yes, sir."

And on page 79 of his deposition, respondent Lawrence testified as follows:

"Q. So, as it presently stands, Dailey Oil Tools, in combination with yourself and Homco, has sued every competitor in hydraulic fishing tools that you know about that is unlicensed?
A. Yes, sir, everyone that I know of."

The fact that Costello, patentee of one of the patents now owned by respondents once lived in California in no way changes the above facts.

Respectfully submitted,

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VINSON, ELKINS, WEEMS & SEARLS
JOE E. EDWARDS
Of Counsel

May ____, 1957

Service of a copy of the above reply brief is acknowledged this _____ day of May, 1957.

Attorney for Respondents